



AN ASSOCIATION OF
MONTANA HEALTH
CARE PROVIDERS

EXHIBIT 4

DATE 2/16/07

HB 624

Testimony in Support of HB 624

Nurse Licensure Compact (NLC)

MHA...An Association of Montana Health Care Providers supports passage of HB 624, a bill that will allow Montana to enter into an interstate "compact" with other states that have the same legislation. MHA represents not-for-profit hospitals, nursing homes, home health agencies, hospices, and assisted living facilities across Montana.

The compact provides "mutual recognition" of nursing licensure in these states; the mutual recognition model of nurse licensure allows a nurse to have one license (in his or her state of residency) and to practice in other states (both physical and electronic), subject to each state's practice law and regulation. Under mutual recognition, a nurse may practice across state lines unless otherwise restricted.

The primary goal of the compact, according to the National Council of State Boards of Nursing, is to "remove regulatory barriers to increase access to safe nursing care." As a representative for our members that employ thousands of the state's approximately 14,000 licensees, MHA also maintains this goal as one of our strategic priorities.

It is public knowledge that we live in a world of healthcare professional shortages. Facilities must often go for weeks and/or months without sufficient staff, so existing staff become overworked and burnt out in order to meet patient care needs. When nursing staff are hired, it is important for all parties involved to have as efficient a licensure application process as possible. If a nurse with an unrestricted license were to come to Montana from another compact state, the usual timeframe can be significantly reduced.

Currently there are 20 states participating in the compact; these include our surrounding states of Idaho, Utah, and North and South Dakota. Wyoming is considering it, and will likely move forward when Montana does.

Why is the NLC important to the citizens of Montana?

- Many nurses hold licenses from several states; having one license (when compact, or "party" states are involved) reduces barriers to licensure.
- One license improves tracking for disciplinary processes; compact states have access to a comprehensive, online database of license information.
- One license promotes cost effectiveness and simplicity for the licensee, easing the process for recruitment to Montana facilities.
- Temporary staffing shortages could be addressed, particularly in border towns, with nurses from other compact states (for example, nurses coming in from North Dakota to work in Culbertson, Baker, Sidney, etc.).
- Telemedicine and telenursing are increasingly utilized in Montana, including across state lines; if a nurse in Billings counsels a patient in North Dakota or Idaho, s/he is practicing nursing in that state. A mutual recognition model would eliminate the need for the nurse to have a license in each of these states, making it easier for patients to receive services without traveling great distances.

Key issues to consider:

- States of original licensure continue to have complete authority in determining licensure requirements and disciplinary actions on a nurse's license per the state's Nurse Practice Act.
- The NLC provides that the nurse is held accountable for complying with the nursing practice laws and other regulations in the state where the patient is located at the time care is rendered. This accountability is similar to the motor vehicle driver (driver's license compact) who must obey the driving laws in the state where he or she is driving. In fact, all nurses are accountable for this--it is not unique to the NLC.
- As provided in the NLC, both the state of licensure and state where the patient is located at the time the incident occurred may take disciplinary action and thus directly address the behavior of the nurse licensed through the NLC. The NLC actually enhances the state of residency's ability to discipline; through ready exchange of investigatory information, the state of residency has the most current and accurate information in order to better determine the appropriate course of action in disciplinary cases.
- The NLC does not impact the statutory authority at the federal or state level for collective bargaining. There is little or no practical difference in the ability of employers to bring in licensed nurses from other jurisdictions under the NLC or by endorsement.

The Montana State Board of Nursing (BON) is unanimous in its endorsement of the Nursing Licensure Compact Legislation. MHA strongly supports Representative Clark and the BON in their efforts to recognize the changing times in health care in our state, and the importance of keeping up with those times to help maintain access to care for all our citizens. We urge you to support these efforts as well.

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Frequently Asked Questions Regarding the National Council of State Boards of Nursing (NCSBN) Nurse Licensure Compact (NLC) Updated April 2004

What is the mutual recognition model?

The mutual recognition model of nurse licensure allows a nurse to have one license (in the nurse's state of residency) and to practice in other states, as long as that individual acknowledges that he or she is subject to each state's practice laws and discipline. Under mutual recognition, practice across state lines is allowed, whether physical or electronic, unless the nurse is under discipline or a monitoring agreement that restricts practice across state lines. In order to achieve mutual recognition, each state must enter into an interstate compact, called the Nurse Licensure Compact (NLC).

What is an interstate compact?

"An interstate compact is an agreement between two or more states established for the purpose of remedying a particular problem of multistate concern." (*Black's Law Dictionary*)

An interstate compact, and in this case the NLC:

- Supersedes state laws.
- May be amended by all party states agreeing and then changing individual state laws.

What is meant by multistate licensure privilege?

Multistate licensure privilege means the authority to practice nursing in any compact state that is not the state of residency. Additional license is not granted for this authority.

What determines primary residency for licensure purposes in the NLC?

The Nurse Licensure Compact Administrators (NLCA) defined primary residence in the compact rules and regulations. Sources used to verify a nurse's primary residence for the NLC may include, but are not limited to, driver's license, federal income tax return or voter registration.

Why was residency, not practice location, used for determining jurisdiction?

During the development of the NLC, NCSBN carefully examined two options: (1) linking of licensure to the "state of residence"; and (2) linking licensure to the "state of practice" and concluded that it was preferable for the state of residence to be the state of licensure. This decision was made specifically to enhance public protection while retaining state-based authority and reducing administrative burden.

Although the traditional licensure system was built upon state of practice, issuing a single license to practice in multiple states under the mutual recognition model forced a reconsideration of that tradition. Licensure through state of practice was rejected for a number of reasons:

- Determining the state of practice is difficult in this era of working for multiple employers, at multiple sites across state lines and through telenursing.
- Tracking a nurse in the event of a complaint/investigation is more readily accomplished with a residence link (address) than an employment/practice link.
- Linking licensure with practice can be problematic for nurses not currently employed or moving in or out of the workforce.
- Defining practice as occurring both where the nurse is and where the patient is, for purposes of identifying the "home" state, is difficult because there could be more than one state of practice.

Since maintaining state-based authority was a critical objective in developing the NLC, it was determined that changing the residency requirement would have drastically changed the substance of the NLC from an instrument to facilitate nurse mobility through mutual recognition of licensed nurses to essentially a national practice act.

Why is an individual living in a NLC state limited to one license among the NLC states?

- One license reduces the barriers to interstate practice.
- One license improves tracking for disciplinary purposes.
- One license promotes cost effectiveness and simplicity for the licensee.
- One license acts as an unduplicated listing of licensed nurses, for planning and disaster preparedness.
- One license facilitates interstate commerce.

Can an individual hold both an RN and an LPN/VN license type in the NLC?

Yes, the mutual recognition model provides for this authorization: one license per each license type if permitted by the state of residency.

Does the NLC reduce the level of a state's licensure requirements?

No. Under the NLC, states continue to have complete authority in determining licensure requirements and disciplinary actions on a nurse's license per the state's Nurse Practice Act.

How does the NLC address the varying scopes of nursing practice as authorized by each NLC state?

The NLC provides that the nurse is held accountable for complying with the nursing practice laws and other regulations in the state where the patient is located at the time care is rendered. This accountability is similar to the motor vehicle driver (driver's license compact) who must obey the driving laws in the state where he or she is driving. In fact, all nurses are accountable for this, it is not unique to the NLC.

Does the NLC affect the authority of the primary state of residency to discipline?

No. As provided in the NLC, both the state of licensure ("home/residency state") and state where the patient is located at the time the incident occurred ("remote/other NLC state") may take disciplinary action and thus directly address the behavior of the nurse licensed through the NLC. The NLC actually enhances the state of residency's ability to discipline; through ready exchange of investigatory information, the state of residency has the most current and accurate information in order to better determine the appropriate course of action in disciplinary cases.

How do violations get reported and/or processed in the NLC?

Complaints in a nonresidency compact state concerning a violation that occurred would be processed in the state the violation was reported to have occurred, and the action taken would also be reported to the state of residency. For example, the state of practice may issue a cease and desist order to the nurse, and the state of residency may also take disciplinary action against the license of that nurse. Many states choose to investigate the complaint in the state in which the incident occurred and transfer that information to the licensing board for action, so it is taken on the licensee only once.

NCSBN has developed a coordinated licensure information system called Nursys™ to enable the sharing of information. All information involving any action is accessible to all NLC states. Additional information in Nursys™ is also available to participating noncompact states. Final actions on nurse licensure that are publicly available by all participating states in Nursys will also be available to the public for a small fee. For more information, visit www.ncsbn.org in the Nursys™ License verification section.

What is meant by "home" state or state of residency/licensure action?

The home state is the state in which the nurse declares residency and receives the license that allows participation in the NLC. Only the state of residency/licensure can take action against the license. Action by that state means any administrative, civil or criminal penalty permitted by that state's laws which is imposed on a nurse by the board of nursing or other authority in the state of residency/licensure. This includes actions against an individual's license.

What is meant by remote state action?

The remote state is the compact state that is not the state of residency/licensure and represents a new authority granted to the participants of the NLC. Remote state action is any administrative, civil or criminal penalty imposed on a nurse by a remote state's licensure board or other authority. This includes actions against an individual's multistate licensure privilege to practice in the remote state. For example, under the NLC, authority is given to issue cease-and-desist orders by the remote state or the remote state's licensing board.

Must the state of residency/licensure notify other NLC states of disciplinary actions?

Yes, this is accomplished by reporting information to Nursys™, the coordinated nurse licensure database.

Does every complaint received by the NLC state need to be shared with the state of residency/licensure? Do the results of these complaint investigations need to be shared with the state of residency/licensure?

The nonresidency/practice NLC state will report to the Nursys database any actions taken. The nonresidency/practice NLC state will also report any significant current investigative information yet to result in an action by that state. Nursys will be used to notify the state of residency/licensure of any significant investigative information and any actions on the privilege to practice.

How is the NLC administered?

A separate body composed of the participating state board of nursing administrators in charge of that state's compact operations is called the Nurse Licensure Compact Administrators (NCLA). It is recognized that many complaints are not substantiated and reporting these would increase workloads and may be nonproductive.

Concerning complaints, what information is reasonably necessary to share with all NLC states?

All NLC states share information regarding who to contact for information regarding significant investigative information relevant to a current investigation.

How does the NLC affect individuals participating in alternative programs?

Nothing in the NLC overrides a party state's decision that participation in an alternative program may be used in lieu of licensure action, and that such participation remains nonpublic if required by the laws of the state of residency/licensure. All NLC states must require nurses who enter any alternative programs to agree not to practice in any other NLC state during the term of the alternative program without the prior authorization from that NLC state.

Does a board of nursing have the authority to deny licensure by endorsement to an applicant who has had discipline action in another state?

Yes. The licensing authority in the state where an application is made may choose not to issue a license if the applicant does not meet the qualifications or standards for granting a license.

Are advanced practice registered nurses (APRNs) included in the NLC?

No, not in the NLC, but in 2002, the NCSBN Delegate Assembly adopted the separate APRN Compact model legislation and implementation guidelines. Advanced practice nurses were not included in the original NLC (in 1999) because of the wide variability in the regulation of advanced nursing practice needed special consideration.

What is the status of the APRN Compact?

Similar to the existing NLC for recognition of RN and LPN licenses, the separate APRN Compact offers states the mechanism for mutually recognizing APRN licenses/authority to practice. This

is a significant step forward for increasing access and accessibility to qualified APRNs. A state must be an operational member of the NLC for RNs and LPNs before entering into the APRN Compact. A state must adopt both compacts to cover LPNs/RNs and APRNs for mutual recognition.

The Uniform APRN Licensure/Authority to Practice Requirements, developed by NCSBN with APRN stakeholders in 2000, establishes the foundation for this APRN Compact.

At this time only Utah has adopted the APRN Compact, but various legislative bills have been introduced in recent years, and several states have indicated a desire to adopt the APRN compact within the next 2-3 years.

Does the NLC affect states' collective bargaining rights/facilitate strikebreaking?

The NLC does not impact the statutory authority at the federal or state level for collective bargaining. There is little or no practical difference in the ability of employers to bring in licensed nurses from other jurisdictions under the NLC or by endorsement.

NCSBN does not believe that the NLC facilitates strikebreaking. However, to the extent an individual state believes the compact might do so, language can be included in the enabling legislation explicitly stating that the NLC does not supersede any existing state labor laws.

As a matter of public policy, boards of nursing do not consider where or in what circumstances a qualified nurse plans to practice. This is true of traditional state licensing; it is also true of nurses practicing under the NLC. The reality is that the turnaround time to grant a temporary permit or temporary license is a matter of days in most states. The initiation of a strike is typically an event of last resort that mandates prior notice to affected facilities. There is time for contingency planning.

Does the NLC impact how disciplinary cases are handled?

All boards of nursing are mandated by law and committed to providing fair and objective resolution of disciplinary cases. The Nurse Practice Acts of most states (including non-NLC states) currently authorize boards of nursing to take action based upon action in another state. This means that a nurse who has his or her license disciplined in one state is likely to also face action in all other states of licensure. Multiple actions are possible, and likely, under the traditional regulatory scheme of single state licensure.

To date, there have been only limited numbers of disciplinary cases that involve two or more states. When two or more states are involved, boards in the NLC rely on the disciplinary determination made by another board just as boards do in non-NLC states.

How does the NLC get implemented?

In order for a state to join the NLC, state legislators or regulators must enact the interstate compact into state law or regulation. The NCSBN Delegate Assembly set out to accomplish this beginning in 1997, and drafted an outline called *Strategies for Implementation of the Mutual Recognition Model of Nursing Regulation*.

Does enactment of the NLC affect a state's current Nurse Practice Act?

Enactment of the NLC does not change a state's Nurse Practice Act in any way. The NLC gives states additional authority in such areas as granting practice privileges, taking actions and sharing information with other NLC states.

Does enactment of the NLC affect the individual licensee?

The individual RN or LPN/VN residing in an NLC state can practice in all the party states by virtue of the multi-state privilege to practice, unless there is some restriction placed on the license, and thus not granting the multi-state privilege. The individual RN or LPN/VN residing in a non-NLC state will continue to be licensed in individual state(s).

If a nurse lives in an NLC state and obtains a license in a non-NLC state, must the nurse give up the license from the NLC state?

No. The license from the NLC state where the nurse resides allows the nurse to practice in all states party to the NLC. The license obtained from the non-NLC state allows practice in just that state.

Is there a time requirement for applying for a new license in a new state of residency (an NLC state)?

According to the NLC rules and regulations, a nurse changing primary state of residence from one party NLC state to another, may continue to practice under the former state license if (including the NLC privileges) processing of the nurse's new licensure application in the new state of residency does not exceed 30 days.

How do these rules and regulations developed by the NLCA provide authority in the individual NLC states?

The NLC is a legal contract between states that enables nursing practice across state lines. In each state that adopts the NLC, the NLC is an additional statutory layer above the individual state's Nurse Practice Act, which remains in place. The NLCA develops rules and regulations to administer the compact, and then individual state boards of nursing in the NLC adopt the rules. If an individual state refuses to adopt the rules the NLCA develops, that state would be in violation of the NLC contract and thus could lose the right to belong to the NLC.

How will an employer know that a nurse's NLC license is no longer valid?

The burden is on the employer, as it is under single-state licensure models, to verify licensure at all significant times of change in status of nurses they employ. Under the NLC, these significant times include any time a nurse changes state of residence. In addition, they can check Nursys™ at www.nursys.com.

How do nurses practicing in NLC states obtain ongoing access to practice-related information, including current board of nursing policies?

Nurses should have access to this information through the board of nursing in their residency/licensure state. The NLC does not interfere with this procedure.

Making current and timely information regarding nursing practice available to nurses is an ongoing challenge. Many boards utilize technology to maintain Web sites and post practice-related information, including board policies. Boards of nursing also utilize newsletters and other communication activities.

Members of the NLCA have committed to making practice-related information readily available on their state Web sites and would welcome input on how to improve this information-sharing process.

How do you know who is practicing in your NLC state?

Knowledge of the nurses practicing in any state is important for a variety of public policy reasons, notably workforce data collection. It is not important for public protection, though. Once 100% participation has been achieved in the NLC, we will have the first-ever unduplicated count of active nurse licenses.

Any lack of reliable information about nurses practicing in a state is neither created nor solved by the NLC. A non-NLC state does not have a complete accounting of all nurses practicing in its jurisdiction; it has information only on those nurses licensed in its jurisdiction.

The concept of mutual recognition is not a new one. Thousands of nurses working in the military, in federal facilities and for federal agencies practice on the basis of being licensed in and then are allowed to practice in any federal setting. This occurs through exemptions defined in each Nursing Practice Act.

Some states that have adopted the NLC have developed a registry as a means for tracking nurses who practice under the NLC privilege, and they incorporated this in the enabling language for the NLC in that state.

Nurses in many NLC states are currently required to indicate all states in which they have practiced as part of license renewal. It may be that some reliable extrapolation is possible from this data. A number of states have established nursing workforce data centers in an attempt to have better data for policymakers. NCSBN has made a commitment to work with all stakeholders to assure that data about nurses, and that is also needed by policymakers, is available.

What is key to smoothly implementing the NLC in my state?

It is important that rule-making processes to implement the NLC be clearly spelled out in the legislation, and that proposed implementation regulations be developed simultaneously with that legislation. The NLCA has drafted model rules that have been adopted through each NLC state's open and public rule-making processes, as set forth in each state's Administrative Procedures Act. States should plan 6 months – 1 year between legislation passing and fully implementing the NLC.

Why should my state support the NLC?

Reasons to be in favor of the NLC are:

- Clarification of the authority to practice for many nurses currently engaged in telenursing or interstate practice.
- Greater mobility for nurses.
- Improved access to licensed nurses during a disaster or other time of great need for qualified nursing services.
- Most importantly, improved access to nursing care.
- Enhanced discipline and information-sharing among participating NLC states.

Who else supports the NLC?

Compact endorsements and those who have expressed NLC support to date:

- Many state nursing associations have expressed support for the NLC, and have worked to help adopt it (i.e., Arkansas Nurses Association).
- The American Organization of Nurse Executives (AONE).
- Several state hospital associations have supported the NLC and also have worked to adopt it in their states.
- American Association of Occupational Health Nurses (AAOHN).
- U.S. Department of Commerce, which supported the NLC in speech to the American Telemedicine Association in 2003 and formally recognized NLC in its report to Congress titled "Innovation, Demand and Investment in Telehealth (February 2004).
- The Center for Telemedicine Law.
- The Telehealth Leadership Council
- Citizens Advocacy Center (CAC)

FOR MORE INFORMATION

Please visit www.ncsbn.org in the Nurse Licensure Compact section to access the NLC and APRN Compacts, enabling language, rules and map of states that have implemented the NLC.